



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO

**Virginia Electric and Power Company d/b/a Dominion Virginia Power
FOR
Phase 1 Oil Terminal, Yorktown, Virginia**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.34:20, between the State Water Control Board and Virginia Electric and Power Company d/b/a Dominion Virginia Power, regarding the Phase 1 Oil Terminal, Yorktown, Virginia, for the purpose of resolving certain violations of the State Water Control Law and the applicable regulations.

SECTION B: Definitions

Unless the context indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Aboveground storage tank" or "AST" means any one or combination of tanks, including pipes, used to contain an accumulation of oil at atmospheric pressure, and the volume of which, including the volume of the pipes, is more than ninety percent above the surface of the ground. This term does not include line pipe and breakout tanks of an interstate pipeline regulated under the Hazardous Liquid Pipeline Safety Act of 1979 or the Natural Gas Pipeline Safety Act of 1968, as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Containment and cleanup" means abatement, containment, removal and disposal of oil and, to the extent possible, the restoration of the environment to its existing state prior to an oil discharge.

4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping.
7. "Dominion" means Virginia Electric and Power Company d/b/a Dominion Virginia Power, a corporation authorized to do business in Virginia. Dominion is a "person" within the meaning of Va. Code § 62.1-44.3
8. "Facility" or "Phase 1" means Dominion's Phase 1 Oil Terminal located adjacent to the Yorktown Power Station in York County, Virginia, at which Dominion stores heavy #6 fuel oil.
9. "Line 159" means one of two steel 24-inch pipes owned by Dominion and operated by Western Refining Yorktown, Inc., that run west to east and convey fuel oil between two Dominion ASTs (ASTs A and B) on the Facility and the Western Refining Yorktown, Inc., barge-unloading dock that extends into the York River. For most of its one-and-one-half-mile length, Line 159 runs along the northern perimeter of the adjacent property of Western Refining Yorktown, Inc. There is an earthen embankment that runs parallel to (and north of) Line 159.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. "Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity. See Va. Code § 62.1-44.34:14.
12. "Operator" means any person who owns, operates, charters, rents, or otherwise exercises control over or responsibility for a facility or a vehicle or vessel.
13. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
14. "Person" means any firm, corporation, association or partnership, one or more individuals, or any governmental unit or agency thereof.
15. "Pipe" or "piping" means a pressure-tight cylinder used to convey a fluid or transmit a fluid pressure.

16. “State Water Control Law” means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 11 (Va. Code §§ 62.1-44.34:14 through 62.1-44.34:23) of the State Water Control Law addresses discharge of oil into state waters, lands, or storm drain systems.
17. “TRO” means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
18. “Va. Code” means the Code of Virginia (1950), as amended.
19. “VAC” means the Virginia Administrative Code.
20. “Western Refining” means Western Refining Yorktown, Inc.

SECTION C: Findings of Fact and Conclusions of Law

1. Dominion is the owner of the Facility, which includes two ASTs – ASTs A and B. ASTs A and B each holds 21 million gallons of oil, in the form of heavy #6 fuel oil, and is surrounded by bermed secondary containment. Under the terms of a Terminal Services Agreement between Dominion and Western Refining, at all times relevant to this Order, the latter was responsible for the operation and maintenance of Line 159 and the Phase 1 ASTs [then registered under Western Refining’s Facility AST ID Number (5026427)]. A third party leases the capacity of the Phase I ASTs and stores therein heavy #6 fuel oil, part of which it sells to Dominion for use as fuel in the Yorktown Power Station. At the boundary between the Dominion and Western Refining properties, until November 1, 2010, several short sections of Line 159 had been located underground below access roads.
2. On November 1, 2010, Western Refining reported to DEQ the discharge of heavy #6 fuel oil that had leaked from a pipe on Western Refining property; containment and cleanup were reported as having been initiated immediately upon discovery of the discharge. In a written response dated November 4, 2010, Dominion identified a leak in Line 159 as the source of the discharge. Line 159 had been isolated and a response contractor was onsite conducting a containment and cleanup. The report stated further that the discharge had been contained within the ditch system on Western Refining property, which had prevented the discharge from reaching State waters.
3. Va. Code § 62.1-44.34:18 prohibits the discharge of oil into or upon state waters, lands, or storm drain systems.
4. On November 29, 2010, the Department issued Notice of Violation No. 2011-T-1226 to Dominion for a discharge of oil to the land.
5. In response to the NOV, Dominion representatives met with DEQ enforcement staff on December 22, 2010, and followed up with a written response dated January 21, 2011. Dominion stated that the ditch where the discharge had occurred had been remediated to

pre-spill conditions. A total of sixty cubic yards of contaminated soil had been excavated containing an estimated 700-800 gallons of heavy #6 fuel oil. Dominion's Root Cause Analysis concluded that the discharge resulted from the under-insulation corrosion of Line 159 having caused a small leak in a section of Line 159 that was located underground below the access road between the Dominion and Western Refining properties. Dominion asserted that the steel pipe sleeve around that section of Line 159 had been improperly welded allowing groundwater to enter the annulus between the pipe and the pipe sleeve. A consultant had been hired to perform a guided-wave analysis of Line 159 along its entire length to identify other areas of concern. The representations of Dominion staff were confirmed by a site visit by DEQ enforcement staff on January 31, 2011.

6. On June 15, 2011, a Dominion representative confirmed that the guided-wave analysis had been completed; areas of concern along Line 159 had been identified and repaired; and the section of Line 159 where the discharge had occurred had been elevated on risers to cross the access road overhead. Dominion reported the total cost of investigation, repair, containment and cleanup to be \$1.3 million.
7. Based on the foregoing information collected by DEQ, the State Water Control Board concludes that Dominion has violated Va. Code § 62.1-44.34:18, which prohibits the discharge of oil into or upon state waters, lands, or storm drain systems, as described in paragraph C(5), above.
8. Dominion has submitted documentation as noted in paragraphs C(2) and C(6), above, that verified that the violation described therein has been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it pursuant to Va. Code § 62.1-44.34:20, the Board orders Dominion, and Dominion agree to pay a civil charge of \$5,600 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Dominion shall include its Federal Employer Identification Number (FEIN) (54-0418825) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Petroleum Storage Tank Fund (VPSTF)].

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Dominion for good cause shown by Dominion, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Dominion admits to the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact and conclusions of law in this Order.
4. Dominion consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Dominion declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Dominion to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Dominion shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Dominion shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Dominion shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Dominion.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Dominion has completed all of the requirements of the Order;
 - b. Dominion petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Dominion.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Dominion from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Dominion and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Dominion certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and

legally bind Dominion to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Dominion.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, Dominion voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 20__.

Regional Director
Department of Environmental Quality

Virginia Electric and Power Company voluntarily agrees to the issuance of this Order.

Date: 10/10/2011 By: C.D. Holley, VP
(Person) (Title)
Virginia Electric and Power Company

Commonwealth of Virginia

City/County of Hanover

The foregoing document was signed and acknowledged before me this 10 day of October, 2011, by C.D. Holley who is Vice President of Virginia Electric and Power Company on behalf of the corporation.

Amy L. Bowers
Notary Public

7296406
Registration No.

My commission expires: 07/31/2013

Notary seal:

